IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

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CIVIL WRIT PETITION NO.19496 OF 2005.
DATE OF DECISION: 27th November, 2007.

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Sunta Devi wife of Ishwar Singh son of Abhey Ram, resident of Village Balla, Tehsil Assandh, District Karnal L.Rs of Smt. Sunta Devi 1. Ranbir Singh son of late Smt. Sunta Devi wife of Ishwar Singh 2. Rajbir son of late Smt. Sunta Devi and 3. Tejbir son of late Smt. Sunta Devi, all resident of Balla Tehsil Assandh District Karnal. (Impleaded vide order dated 11.9.2007 in CM No. 13128 of 2007).

Versus

1. The Commissioner, Rohtak Division, Rohtak;

2. The Sub Divisional Officer (Civil) cum Collector, Assandh, District Karnal;

3. Government Senior Secondary School, Sub the Balla District Karnal through its Principal;

4. Ranbir

5. Rajbir and

6. Tejbir sons of Ishwar Singh son of Abhey Ram, all resident of Village Balla, Tehsil Assandh, District Karnal.

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Before: Hon'ble Mr. Justice K.S.Garewal, and
Hon'ble Mr. Justice R.S.Madan, J J.

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Present: Shri Mahavir Sandhu, Advocate, for the petitioner.

Shri Anil Rathee, Additional Advocate General, Haryana, for the respondents 1 to 3..

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R.S.Madan, J

The claim of the petitioner is that Ishwar Singh, husband of the petitioner, Sunta Devi (since deceased) and now represented through L.Rs impleaded vide order dated 11.9.2007 in CM No. 13128 of 2008, is that she was in cultivating possession of the disputed land measuring 65 Kanals 1 Marla, fully described in the writ petition being Gair Marusi tenant, on

payment of Rs.1700/- per annum as “Lagaan Bill Mukta” for the full year. Entries were incorporated in the copy of Jamabandi to this effect in Annexures P-1 to P-5. After the death of Ishwar Singh, entries in the Jamabandi were mutated in favour of the petitioner and her sons. A perusal of the copy of jamabandies clearly depict that the land in dispute is in the ownership of Government, High School, Balla. However, the same was in physical and cultivating possession of the petitioner being Gair Marusi tenant at the rate of Rs. 1700/- per annum, as is recorded in column No.2. The petitioners claim that they are in permissible and lawful possession as tenant under the government High School, Balla. According to the petitioners they are paying the lease money regularly to the government. It is alleged that respondent No.3 filed an application under Sections 2 to 7 of the Haryana Public Premises Act, 1971 in the Court of Sub Divisional Officer (Civil), cum Collector, Assandh, District Karnal, for the ejectment of the petitioner and her sons from the land in dispute alleging therein that according to the jamabandi for the year 1995-96 the petitioner Sunta and Dharamvir Singh son of Ishwar Singh, are recorded as “Gair Marusi tenant”, wrongly and that the land is being cultivated by the petitioner and her sons without payment any rent and batai thereof either to the Government or to the Head Master of the School or Gram Panchayat. Hence, they are in un-authorized possession of the suit land for the last 25-30 years. The petitioners have alleged that the order of ejectment was passed against them because the Head-Master of the School has filed an affidavit before the authorities that the School has not received any amount on account of lease, as claimed by the petitioners. The petitioners have thus prayed that they being in permissible possession of the suit land are not in un-authorized possession of the land in dispute and the order of ejectment passed against them by the Collector Annexure P-7 is not sustainable.

Upon notice, the petition was contested by the respondents by filing written statement wherein it was asserted that the petitioners are not entitled to invoke the extra ordinary writ jurisdiction of this Court because the land in dispute measuring 65 Kanals 1 Marla, is owned by Senior Secondary School,Balla. The land in dispute was leased out for one year i.e. 1975-76 in an auction, for Rs. 1700/- per annum, in favour of Ishwar Singh and the lease was never given for in-definite period. Therefore, the petitioner are in un-authorized possession of the suit land. The entries in the revenue records pertaining to the year 1985-86 depicts the name of Ishwar Singh, as Gair Marusi, was wrongly shown because the lease period was never extended. This mistake also occurred in the jamabandi for the years 1995-96 and 2000-2001. It is alleged that the petitioners have not placed on the record any rent note or lease deed, which was ever executed in favour of Ishwar Singh. An affidavit was filed before the Collector by the Head Master of the School regarding un-authorized possession of the petitioners over the suit property, wherein the factum of inducting the petitioners as tenant over the suit property was denied as well as that the same was leased out to Ishwar Singh beyond a period of one year. Though an attempt was made by the petitioners to sent the Bank Draft for an amount of Rs. 5100/- to the School but the same was returned as no lease deed was ever executed between the petitioners and respondent No.3. With these pleas in the written statement, the respondents prayed that the order of ejectment passed by the Collector, is in accordance with the law and the same be up-held.

It is apt to mention here that an appeal was filed before the Commissioner Rohtak, by the petitioners against the order of ejectment passed by the Collector, which was also dismissed being devoid of merit.

The petitioners have now impugned the aforesaid orders before this Court in this Writ Petition.

We have heard the learned counsel for the parties and have carefully gone through the record.

The learned counsel for the petitioners contended that the petitioners are in possession of the disputed land on payment of Rs. 1700/- per annum as rent, which they are paying for the last 25 years. The petitioners have also attached receipts showing the deposit of amount with the government treasury. A bare perusal of the receipts shows that Sunta Devi widow of late Shri Ishwar Singh had deposited the amount in the government treasury from 1990 to 2003 for a period of 13 years but it is not clear that under whose orders Sunta Devi is depositing the amount with the government treasury, under the Head “Account of General Education Senior Secondary School, Balla”,for the last 13 years.

The learned counsel for the petitioners further contended that it is an admitted fact that the land in dispute was leased out in favour of Ishwar Singh (since deceased) for one year but after the expiry of one year, neither any notice was issued by the authorities nor any notice was ever issued for the non-deposit of leased money, which according to the petitioners, is already lying deposited with the government treasury. The petitiones have attached receipt Annexure A-1 with respect to the deposit of auction amount of Rs. 1520/- for theyear1976-77. Vide Annexure A-2 Ishwar Singh, again deposited an amount of Rs. 2800/- on account of auction amount of the land attached with the School for the year 1980-81. Vide receipt Annexure A-3 a sum of Rs. 22100/- was deposited as lease money from Kharif 1992 to Kharif 2003 in the government treasury in the Major Head of the School. Receipt A-4 reflects that a draft for an amount of Rs.5100/- was sent in favour of the Principal, Senior Secondary School, Balla, which was returned. Annexure A-5 receipt dated 8.1.2007 shows that Sunta Devi wife of Ishwar Singh had deposited an amount of Rs. 10200/- for the period Rabi 2003 to Kharif 2009 in the Major Head of the School.

The learned counsel for the petitioner further contended that after the death of Ishwar Singh, the disputed property was inherited by the successor in interest and as per rules the authorities were required to issue notice for termination of lease to the legal representatives of the deceased. But no notice was ever issued to the L.Rs of deceased before initiating the proceedings against the petitioners, under the Haryana Public Premises Act, 1971.

It is further the contention of the learned counsel for the petitioner that once the tenancy is created for a fixed period, the possession thereof cannot be said to be un-authorized. Further more, since the tenancy was not ever terminated or determined, six months notice is required to be issued. In support of his contention, he placed reliance on Balkar Singh and another Versus Commissioner Jalandhar Division, Jalandhar and another- 1989 P.L.J. 101, wherein the Division Bench of this High Court has observed as under:-

> "Where a lessee remains in possession of immovable property leased even after the expiry of the period of the lease and the lessor accepts rent from him or otherwise assents to his continuing in possession, he would become by reason of the provisions of Section 116 of the Transfer of Property Act a tenant holding over. The tenancy created by the tenant holding over is a statutory tenancy which enables the tenant to retain possession after the expiry of contractual tenancy. The statutory tenancy so created continues till it is terminated or determined. In the absence of any agreement to the contrary a statutory tenancy created under Section 116 of the Transfer of Property Act may be determined in the manner enjoined under Section 106 of the said Act. The lease of agricultural land is renewed from year to year and the tenancy created by holding over under Section 116 in this case, was, therefore, annual tenancy terminable on the part of either the lessor or the lessee by six months notice.

In para No.4, it was further observed as under:-

> "To sum-up admittedly the relationship of landlord and tenant had been established between the parties and petitioner-lessees continued to remain in possession even after the expiry of term of lease. That amounted

> to holding over and there was no determination of the lease or tenancy in accordance with law. The petitioners, therefore, cannot be styled as un-authorized occupants of the land so as to invoke the provisions of the Act. In this view of the matter, their summary eviction under the Act cannot be treated as an action for eviction in due course of law".

The learned counsel further relied upon *Karnail Singh* Versus *Sub Divisional Officer (Civil)-cum-Collector, District Sirsa and others* 2000 (2) P.L.J. 38, where a Division Bench of this Court had observed in paragraph 4 of the judgment that while initiating eviction proceedings against the petitioner, a show cause notice under Section 4 and 5 of the Act is a condition precedent before passing of the order of eviction.

On the other hand, the learned counsel for the respondents contended that originally Ishwar Singh was given the land in question by the School for a period of one year, as per receipt Annexure A-1 and after the expiry of period of one year, no fresh lease was created in his favour. There is also a receipt which shows that the Head Master of the School has again leased out the land for one year for 1980-81 in favour of Ishwar Singh but thereafter no further receipt was issued by the School. So far as receipts Annexures A-3 to A-5 are concerned, the same no where depicts that the respondent had ever agreed to give the School land to the petitioners. Mere deposit of rent/amount in the name of the School will not extend the lease period. Reference was made to Gram Panchayat, Village Haripura Versus The Commissioner, Ferozepur Division and another 2006 (4) RCR (Civil) 364, where the Apex Court has observed that whether a person occupying the land of the Gram Panchayat un-authorizedly and voluntarily paying the rent to the Gram Panchayat, the acceptance of auction amount by the Gram Panchayat would not make him lawful tenant.

After hearing the learned counsel for the parties we are of the considered view that so far as the leasing out the suit land to the L.Rs of

Ishwar Singh deceased is concerned, there is no receipt or lease deed on the record to suggest that the School authorities ever allowed them to continue in possession of the suit land after the death of Ishwar Singh. At the same time, the petitioners remained in possession of the land undisturbed. It is further observed that mere depositing of rent in the government treasury in the name of the School will not create a relationship of landlord and tenant between the petitioners and respondent No. 3 unless there is an agreement of lease in writing. No such agreement has been placed on the record.

It is not a case where lease deed was created in the name of the petitioners but the petitioners continued to be in possession of the land. In the absence thereof, the possession of the petitioners over the land is unauthorised and they are liable to be evicted from the School land. However, at the same time while initiating the ejectment proceedings, the Collector did not resort to the issuance of show cause notice under Sections 4 and 5 of the Act ibid about their un-authorized possession over the suit property, which is the condition precedent under the Haryana Public Premises Act, 1971. Thus, the orders Annexures P-9 and P-10 passed without complying with the condition precedent, are non-est in the eyes of law. The writ petition is being accepted on this technical ground and the orders Annexures P-9 and P-10, are hereby quashed.

It would be open for the authorities to proceed against the petitioner, in accordance with law.

(R.S.Madan)
Judge

(K.S.Garewal)
Judge

November 27 , 2007.
Malik